IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7362 OF 2005

Gramvikas Pratishthan & anr .... Petitioner

versus

Abhang Malhari Baiju & ors. ... Respondents.

Shri P.B. Shah for the petitioner.
Shri Anil Joshi for Respondent.
Shri M.H.Solkar AGP for Respdt. no.1.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 17, 2006.

P.C:

1. Heard the learned counsel for both the sides.

Perused the record.

2. Rule. Rule made returnable forthwith.

3. The petitioner institution has filed this petition against the order passed by the Presiding Officer, School Tribunal, Pune dated 11-8-2005 allowing the appeal of the present respondent and set aside the order of termination of his service as Assistant teacher in a secondary school with effect from 10-6-2002. The petitioner was further directed to

re-instate the present respondent with full backwages and consequential benefits.

4. Without further elaboration regarding the factual aspects involved in the dispute, it is to be noted that pending the appeal the present petitioner have filed W.P. No.3273/05 wherein this court by order dated 14-6-2005 observed that though the petitioner had challenged the order of school tribunal, refusing to frame preliminary issues. This court was not inclined to interfere with the matter but at the same time invited the attention of the Presiding Officer of the Tribunal to the ruling of this court in the case of **Anna Manikrao Pathe Vs. Presiding Officer, School Tribunal,, Amravati and Aurangabad Division reported in 1997(3) Mh.L.J. 697.**

5. This was the order obviously passed with a view that the Presiding Officer should com,ply with the dicta not only passed by order dated 14-6-2005 but in the same Division Bench Judgment. However, perusal of the impugned judgment shows that the Presiding Officer has totally ignored the direction issued by this court and had observed that : a careful perusal of the judgment shows that it was not applicable to the facts of the present case.

6. Now on perusal of the contends of the para 15 of the said judgment it must be noted that the directions issued by the Division Bench were irrespective of the facts involved in the dispute before tribunal. Para 15 of the said judgment reads thus:

> *"While disposing of this petition, we deem it appropriate to observe that when such applications under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 are filed before the School Tribunals by the teachers challenging any act of termination on the part of the management, it will be necessary for the Tribunal to frame and decide three preliminary issues. viz. whether the school was a recognised school as defined under the M.E.P.S. Act, whether the appointment of the concerned teacher was made as per section 5 of the M.E.P.S. Act and the Rules thereunder, and whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the act as well as the Rules framed thereunder including the Government Resolutions issued from time to time regarding reservations etc. These preliminary*

points are required to be framed and decided before the appeal proceeds on merits and even if such points are not raised by any of the parties to the appeal, it would be proper on the part of the Tribunal to frame such issues suo motu before examining the merits of the case. In case the findings to any of the preliminary issues arein the negative, the appeal must fail then and there itself, so far as, the relief of reinstatement/continuation in service is concerned."

7. Inspite of this position, the Presiding Officer chose to ignore the Division Bench judgment which was specifically applicable to the dispute which in my view is totally an error approach.

8. Besides this aspect, it is also pointed out that the petitioner had specifically raised this issue regarding the bar of limitation in preferring appeal and therefore it was necessary for the present respondent to file application for condonation of delay in preferring the appeal. However inspite of such subsequent contention raised by the petitioner, there is not even a whisper in the order of the appellate court with regard to the issue of delay in preferring

the appeal. In the case of **Ballumal A Jaisingh Vs. J.J. Builders and others reported in 2003 (3) Mh.L.J. 238** the learned Single Judge of this court has taken a view that the learned judge had no jurisdiction to condone the delay without an application, the action of condoning the delay without application is therefore an action without jurisdiction and whether the learned trial judge has exercised the jurisdiction not vested in him by law, and the order under review was therefore held liable to be set aside. In other words unless and until the delay was condoned on the basis of application made by the appellant, the appeal could not be entertained assuming that there was no delay at all. This especially shows that the Presiding Officer had not even taken into account either the factum of alleged delay or subsequent contention raised by the present petitioner in that regard.

9. These aspects leave no option but to remit the matter to the Presiding officer for adjudication afresh. Hence rule is made absolute. The order dated 11-8-2005 passed by the Presiding Officer is set aside. The matter is remitted back to the Presiding Officer. The present respondent may make application for condonation of delay if it is found that there is delay in filing the appeal and thereafter the Presiding Officer shall determine the said application on merits.

If at all the delay is condoned, then the Presiding Officer shall comply with the directions stipulated in para 15 of the **Anna Manikrao's case (supra)** and then decide the matter on merits.

10. With these directions, the petition stands disposed of with no order as to costs.

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